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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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14 SERENDIP LLC & WENDY CARLOS,
15 Plaintiffs,

16 v.

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19 WARNER BROS. ENTERTAINMENT
INC.,

20 Defendants.
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CASE NO. CV 08-07739 RGK (RCx)
The Honorable R. Gary Klausner

**DECLARATION OF JAN HARLAN
IN SUPPORT OF WARNER BROS.
ENTERTAINMENT INC.'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT;
EXHIBITS**

[Defendant and Counter-Claimant
Warner Bros. Entertainment Inc.'s
Notice of Motion and Motion for
Partial Summary Judgment; Separate
Statement of Uncontroverted Facts and
Conclusions of Law; Declaration of
Linda M. Burrow and Exhibits;
Declaration of Michael J. Kory; and
Declaration of Roberta Thornburg filed
concurrently herewith]

Date: November 30, 2009
Time: 9:00 a.m.
Ctrm: 850

DECLARATION OF JAN HARLAN

I, Jan Harlan, declare and state:

1. I am a documentary filmmaker and film producer. I submit this declaration in support of Warner Bros.' Motion for Partial Summary Judgment. Except as expressly stated, I have personal knowledge of the facts set forth below and, if called as a witness, could and would testify accurately to their veracity.

2. My association with Stanley Kubrick began in or around 1958, when he married my sister, Christiane. I began working with Mr. Kubrick professionally in 1969 on a film project entitled "Napoleon," which was ultimately abandoned. I was an assistant to Mr. Kubrick on the 1971 film *A Clockwork Orange* and was an executive producer on each of Mr. Kubrick's films beginning with *Barry Lyndon* in 1975 and continuing until Mr. Kubrick's death in 1999.

3. I first became acquainted with Wendy Carlos in connection with her work on *A Clockwork Orange*. Ms. Carlos (then known as Walter Carlos) first came to the attention of Mr. Kubrick through his album "Switched on Bach," which featured electronic versions of classic Bach pieces. Based upon my discussions with Mr. Kubrick, it is my understanding that Mr. Kubrick sought out Ms. Carlos to arrange and perform electronic versions of certain classical works for *A Clockwork Orange*. Those works included Beethoven's Ninth Symphony, which figures prominently in the novel by Anthony Burgess on which the *Clockwork Orange* film was based, as well as portions of Gioachino Rossini's "William Tell Overture" and "The Thieving Magpie," and Henry Purcell's "Music for the Funeral of Queen Mary."

4. Mr. Kubrick took a hands-on approach to virtually every aspect of his films, including but not limited to the music used in those films. For *A Clockwork Orange*, Mr. Kubrick worked directly with Ms. Carlos with respect to the pieces she was to arrange. I had little personal involvement in the discussions between Mr. Kubrick and Ms. Carlos. Moreover, while I am aware of an agreement between

1 Polaris Productions, Inc. (a production entity for *A Clockwork Orange*) and Trans-
2 Electronic Music Productions, Inc. ("TEMPI"), Ms. Carlos' loan-out company,
3 regarding the music for *A Clockwork Orange*, I was not involved in the negotiation
4 of that agreement. I do not specifically know who, other than Mr. Kubrick,
5 represented Polaris in those negotiations, however, I am aware that Peter Knecht, an
6 attorney with Warner Bros., reviewed many, if not all, of the license agreements
7 Polaris entered into for *A Clockwork Orange* and I believe that he likely reviewed
8 the TEMPI agreement. Mr. Knecht passed away several years ago.

9 5. Mr. Kubrick began work on the film *The Shining* in the late 1970s. He
10 and I discussed possible composers for the score to *The Shining* and agreed to
11 approach Ms. Carlos to see if she would be interested in writing music for the Film.
12 Ultimately, Mr. Kubrick concluded that much of the music Ms. Carlos, and her
13 then-business and producing partner, Rachel Elkind, created for did not fit with the
14 film, and the score thus consisted of music from other composers as well.

15 6. The music Ms. Carlos created for *The Shining* came in two forms.
16 First, there were works created after TEMPI executed a "Composer Loanout
17 Agreement" written agreement with Peregrine Filmmaatschappij, N.V. relating to
18 *the Shining*. Second, there were one or more "demonstration tapes" that Ms. Carlos
19 sent to Mr. Kubrick with music she had created following discussions with Mr.
20 Kubrick about the film. The music on those "demonstration tapes" was the subject
21 of a letter agreement between TEMPI and Peregrine.

22 7. I was an executive producer on *The Shining* and have first-hand
23 knowledge of the parties' intent in executing the Composer Loanout Agreement and
24 accompanying Letter Agreement. At all times, it was Mr. Kubrick's and my intent
25 to acquire all rights to the music subject to each agreement, and I believed, based on
26 my discussions with Ms. Elkind, that it was her intent to have TEMPI transfer all
27 such rights.

1 8. During the filming of *The Shining* in 1979, Mr. Kubrick's daughter,
2 Vivian, also filmed a documentary about the making of the film entitled *The*
3 *Making of the Shining*. That film was broadcast by the BBC in 1980 and later
4 included in home video versions of *The Shining* released by Warner Bros.

5 9. After Mr. Kubrick's death in 1999, I began work on a documentary
6 film about his life and work that ultimately was entitled *Stanley Kubrick: A Life in*
7 *Pictures*. In putting together the documentary, I contacted a number of people with
8 whom Mr. Kubrick had worked during his life, including Ms. Carlos. Ms. Carlos
9 agreed to participate, and in February 2000, my son Manuel and I met her at the
10 home she shares with Annemarie Franklin in New York, where I conducted a
11 videotaped interview of Ms. Carlos regarding her work with Mr. Kubrick.
12 Following that session, I had dinner with Ms. Carlos and Ms. Franklin, who
13 informed me that they had recently seen Vivian Kubrick's documentary, *The*
14 *Making of the Shining* on DVD and that the film used a recording of Siebelius'
15 "Valse Triste" that Ms. Carlos had included on one of the "demonstration tapes" she
16 submitted to Mr. Kubrick in connection with *The Shining*. Ms. Carlos and Ms.
17 Franklin told me that they believed that Ms. Kubrick did not have the rights to use
18 the "Valse Triste" in her film and asked me to contact Warner Bros. on their behalf.
19 I wrote Ms. Carlos in April 2000 seeking additional information. Although I had an
20 ongoing email correspondence with Ms. Carlos at that time, neither she nor Ms.
21 Franklin supplied the information I needed, nor did they raise the subject of the
22 "Valse Triste" again for several years.

23 10. A few months after our first interview, Manuel and I conducted a
24 second interview session with Ms. Carlos, also at her New York home. One of the
25 purposes of that interview was for Ms. Carlos to play portions of her original music
26 for *A Clockwork Orange* and *The Shining*, which she did. Neither Ms. Carlos nor
27 Ms. Franklin told me that I would need a license to use any music in my film.

28 11. I completed *Life in Pictures* in early 2001 and sent an advance VHS

1 copy to Ms. Carlos. The version I sent to Ms. Carlos included all of the film clips
2 that are in the finished film, including film clips from *A Clockwork Orange* and
3 *The Shining* that contain Ms. Carlos' music. On March 5, 2001, I received an
4 email from Ms. Carlos stating: "What a beautiful job, truly one of the best
5 documentaries I've seen!" and that "The clips from the films are all substantive,
6 and make the points well... ." Ms. Carlos ended her email by stating "here's to
7 good luck with distribution and theater/broadcast releases!" A true and correct
8 copy of Ms. Carlos' March 5, 2001 email to me is attached hereto as Exhibit A.

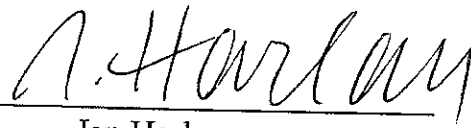
9 12. After I finished *Life in Pictures*, Ms. Carlos and I continued to
10 correspond through email for several years. I considered Ms. Carlos a friend and
11 enjoyed her musicality, wit and intellect. In 2006, I completed a documentary film
12 entitled *Oh Lucky Malcolm* about the life and work of Malcolm McDowell, who
13 starred as Alex in *A Clockwork Orange*. In July 2006, I mentioned *Oh Lucky*
14 *Malcolm* in an email to Ms. Carlos and, at her request, sent her a copy. At about
15 the same time, *Oh Lucky Malcolm* was screened for audiences at the Traverse City
16 (Michigan) film festival. Other than reimbursement for my travel expenses, I
17 received no compensation for the film festival showing, nor was any compensation
18 paid to Warner Bros. for this screening.

19 13. After viewing *Oh Lucky Malcolm*, Ms. Carlos, and subsequently
20 Ms. Franklin, informed me that I needed to obtain a license from them for the
21 use of clips from *A Clockwork Orange* that contained Ms. Carlos' music. I had
22 received clearance from Warner Bros. for those clips, and believed that the
23 music contained in those clips also belonged to Warner Bros. Ms. Franklin
24 quoted me a license fee of \$20,000, which was far more than I could afford
25 given the film's small budget. After making numerous requests of Ms. Carlos
26 and Ms. Franklin, I ultimately removed the clips containing Ms. Carlos' music
27 from my film. Ms. Carlos the agreed in an email dated September 9, 2006, that
28 I should "let the film festival go" and that I did not owe her anything from that

1 showing. A true and correct copy of my September 9, 2006 email exchange with
2 Ms. Carlos is attached hereto as Exhibit B.

3 14. In the fall of 2006, during our discussions regarding *Oh Lucky*
4 *Malcolm*, Ms. Carlos and Ms. Franklin also informed me, for the first time, that
5 they believed that the use of film clips containing Ms. Carlos' music in *Life in*
6 *Pictures* was also a copyright infringement.

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9 I declare under penalty of perjury under the laws of the United States of
10 America that the foregoing is true and correct. Executed this 3RD day of
11 November, 2009 at ST. ALBANS, England.

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15 Jan Harlan
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